

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
March 16, 2005 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Mark Franko, presiding officer, presided. No Board members were present.

Joseph Haughwout appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|--|--|
| 1. Christopher B. Waybright
File Number 2004-03714 (Disc) | Waybright – R
Peter Binsley – C
Judith Binsley – C |
| 2. Arthur Lamb
t/a Awesome Creations
File Number 2004-05029 (Disc) | None |
| 3. Christopher Patete
t/a Sturdy Built MFG
File Number 2003-02576 (Disc) | Patete – R
Kevin McNally – R Atty
Brenda Kay Baker – C
James Gillis – W |
| 4. Ralph Marks
t/a H & M Home Improvement
File Number 2004-04059 (Disc) | None |
| 5. National Restoration Specialists Inc.
File Number 2004-05069 (Disc) | Robert Smith – C
Mary Smith – C |
| 6. National Restoration Specialists Inc.
File Number 2005-00076 (Disc) | Betsy Overman – C |

7. National Restoration Specialists Inc.
File Number 2005-01679 (Disc)

Edward Lewis – C

8. National Restoration Specialists Inc.
File Number 2005-02642 (Disc)

Richard Zasimowich – C
Geraldine Zasimowich – W

9. Michael E. Armstrong and Terry A. Porter
t/a Anything Wood
File Number 2004-03422 (Disc)

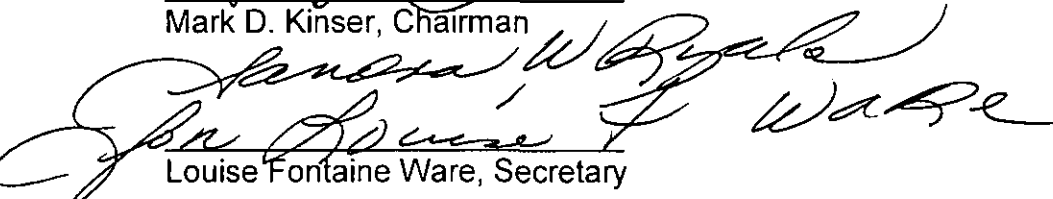
Armstrong – R
Terry Porter – R
Marc Argenzio – C
Kim Argenzio – C

The meeting adjourned at 3:05 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Christopher B. Waybright

File Number: 2004-03714
License Number: 2705041980

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On February 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Christopher B. Waybright ("Waybright") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On March 16, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Christopher Waybright, Respondent; Peter and Judith Binsley ("the Binsleys"), Complainants; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

In August 2003, Waybright entered into a contract with the Binsleys to perform renovations at the subject property. The total value of the project was \$42,400.00. Waybright only holds a Class C contractor's license.

During the IFF, Waybright stated he split the work up into sections. Waybright also stated he mistakenly thought by performing the work in phases that he was under the limit of his Class C license.

Waybright's action of practicing in a class of license for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain seven of the provisions required by the Board's regulation.

During the IFF, Waybright stated he discussed the start and completion date with the Binsleys. Waybright stated his contracts usually do indicate the down payment, however, this contract did not.

Waybright's failure to include subsections a, b, d, e, f, h, and i in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

In December 2003, Waybright completed the work. Waybright claimed additional costs incurred during the work. As a settlement, the parties agreed to a reduced final payment, which reduced the overall value of the contract. This agreement was not executed by way of a change order.

During the IFF, Waybright stated the Binsleys verbally requested changes while Waybright was performing work and Waybright did not use a written change order because the work was happening fast.

Waybright's failure to use a signed, written change order modifying the scope of work and costs of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$250.00 be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 4: Board Regulation (Effective January 1, 2003)

After the work had been completed, Waybright assured the Binsleys that all of his subcontractors had been compensated. However, Waybright failed to fully pay three of the subcontractors hired for the job. As a result, one of the subcontractors filed a mechanic's lien against the subject property. Waybright told the Board's agent that because of personal financial difficulties, he was having problems fully paying the subcontractors. Waybright also told the Board's agent the Binsleys had paid him in full.

During the IFF, the Binsleys stated subcontractors came to their home and requested payment because they were not getting paid by Waybright. The Binsleys acknowledged the lien has been released.

During the IFF, Waybright stated he was paying the subcontractors by the month or through payment plans. Waybright also stated he received a quote from one subcontractor, but the final bill was more than the original quote. Waybright further stated he told the Binsleys that he would take care of paying the subcontractors. Waybright acknowledged that all the subcontractors have been paid in full.

Based on the record, the work was completely performed by December 2003. While it took Waybright an extended period of time to pay the subcontractors and/or vendors, as of today, all the subcontractors and/or vendors have been paid and the lien has been released against the Binsleys's property.

Therefore, I recommend Count 4 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.16.

By: _____

Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 12, 2005 (revised January 26, 2005)

FILE NUMBER: 2004-03714
RESPONDENT: Christopher B. Waybright
LICENSE NUMBER: 2705041980
EXPIRATION: October 31, 2005

SUBMITTED BY: Janet P. Creamer
APPROVED BY: Bonnie Rhea Adams

COMMENTS:

None.

Christopher B. Waybright ("Waybright") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705041980).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On March 16, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Peter and Judith Binsley ("the Binsleys") regarding Waybright Construction Co. and Brian Waybright. (Exh. C-1)

On August 4, 2003, Waybright entered into a written contract, in the amount \$42,00.00, with the Binsleys to renovate a home, in-law house, garage, and shed at 65 River Bend Lane, King William, Virginia 23069. (Exh. C-2)

On August 4, 2003, Waybright entered into a written contract, in the amount \$400.00, with the Binsleys to perform additional work at the subject property. (Exh. C-2)

On August 4, 2003, the Binsleys paid Waybright Construction \$5,312.50 by check and Brian Waybright \$5,312.50 by check. On October 4, 2003, the Binsleys paid Brian Waybright \$5,300.0 by check and Waybright Construction \$5,300.00 by check. On October 17, 2003, the Binsleys paid Brian Waybright \$5,300.00 by check and Waybright Construction \$5,300.00 by check. On November 5, 2003, the Binsleys paid Waybright Construction \$5,000.00 by check. On December 23, 2003, the Binsleys paid Waybright Construction \$5,140.00 by check. (Exh. C-3)

On December 23, 2003, Waybright completed the work. (Exh. C-1)

On October 21, 1997, Waybright was issued Class C contractor's license number 2705041980. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

In a written response received May 26, 2004, Waybright stated, "I thought to understand that all payments under \$7500.0 was O.K. per portion or draw on a project. But as reviewing the contractors class A & B handbook I now understand it is the total amount of the project. Contract cannot exceed \$7500.00." (Exh. R-1)

Waybright practiced in a class of license for which the contractor is not licensed.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;

- b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
- d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- f. Disclosure of the cancellation rights of the parties;
- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contracts used by Waybright in the transaction failed to contain subsections: a., b., d., e., f., h., and i. (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

- 31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

On December 23, 2003, the Binsleys requested a \$2,260.00 credit for work included in the contract that Waybright did not complete. Waybright claimed \$1,600.00 in additional costs. The Binsleys and Waybright agreed to settle the contract with a final payment of \$5,140.00, which reduced the total contract price to \$41,965.00. (Exh. C-4)

Waybright failed to use a written change order, signed by both parties, for a modification to the scope of the work to be performed and the cost of the original contracts.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS

In addition the facts outlined in Count 3:

On September 4, 2003, Custom Ornamental Iron ("Custom") entered into a written contract, in the amount of \$3,400.00, with Waybright to install a steel spiral stair and rail at the subject property. (Exh. W-1)

In September 2003, Custom installed a steel spiral stair and rail at the subject property. (Exh. I-4)

Between September 2003 and December 2003, Waybright rented a dumpster from JTC Dumpster for the Binsley job. (Exh. I-5)

On October 10, 2003, Custom provided Waybright with an invoice, in the amount of \$3,400.00, for the stair and rail installed. (Exh. W-1)

In December 2003, JTC Dumpster sent Waybright an invoice, in the amount of \$1,087.62, for the dumpster rental. (Exh. I-5)

On December 22, 2003, John H. Richardson Cabinet Shop Inc. ("Richardson") provided Waybright with an invoice, in the amount of \$4,180.50, for cabinets. (Exh. C-5)

On December 23, 2003, Waybright assured the Binsleys that all of his subcontractors had been compensated. (Exh. C-1)

In March 2004, Waybright paid JTC Dumpster \$100.00. (Exh. I-5)

As of March 7, 2004, Waybright failed to pay Richardson \$4,180.50 for cabinets constructed and installed at the subject property. (Exh. C-5)

In a letter dated March 7, 2004, John C. Jones Jr. ("Jones"), attorney representing Richardson, stated Richardson was aware Waybright was paid by the Binsleys for job, but had not forwarded payment to Richardson. Jones also requested Waybright pay the amount in full by March 15, 2004. (Exh. C-5)

On March 19, 2004, Richardson filed a Memorandum for Mechanic's Lien, in the amount of \$4,180.50, for work performed at the subject property. (Exh. C-6)

In April 2004, Waybright paid JTC Dumpster \$100.00. (Exh. I-5)

On April 14, 2004, Waybright stated he was paid in full by Binsleys. Waybright also stated he planned to pay Richardson to release the lien on the subject property. (Exh. I-3)

On April 14, 2004, Custom received a \$100.00 check from Waybright. On May 12, 2004, Custom received a \$300.00 check from Waybright. (Exh. I-4 and W-1)

In a written response received May 26, 2004, Waybright stated "Due to the personal financial hardship of a divorce and separation in which a child is involved and lawyer fees, I had some problem paying some (3) subcontractor in full. Payment plans have been made in agreement with both parties for repayment." Waybright indicated JTC Dumpster and Custom were subcontractors for the Binsleys' project. (Exh. R-1)

On June 25, 2004, Waybright paid JTC Dumpster \$100.00. (Exh. I-5)

Waybright misapplied funds by receiving payment in full for construction work performed and failing to pay all the subcontractors.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Arthur Lamb, t/a Awesome Creations

File Number: 2004-05029
License Number: 2705082639

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On February 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Arthur Lamb ("Lamb"), t/a Awesome Creations to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On March 16, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Arthur Lamb, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

In May 2004, Lamb verbally contracted with Joe Dance ("Dance") to assemble a steel building at the subject property. Dance paid Lamb, and Lamb performed the work.

Lamb's failure to use a written contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

Lamb began work on May 10, 2004. On May 12, 2004, Lamb built three sections of the building. The next day, Lamb dropped an arch while raising it, which caused damage to three panels and two eaves. Lamb told Dance he would repair the damage. However, Lamb never returned to perform work after this date.

Lamb's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

After Lamb damaged the panels and eaves, and failed to return to complete the work, Dance ordered replacement parts, and hired another contractor to make the repairs and finish the work.

Lamb's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$1,500.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

In June 2004, the Board's agent requested Lamb provide a written response and supporting documents to the complaint filed with the Board. The Board's agent made subsequent attempts to contact Lamb by mail, and in person. Lamb never responded to the Board's agent.

Lamb's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: December 20, 2004 (revised January 13, 2005)

FILE NUMBER: 2004-05029
RESPONDENT: Arthur Lamb t/a Awesome Creations
LICENSE NUMBER: 2705082639
EXPIRATION: April 20, 2006

SUBMITTED BY: Wayne Mozingo
APPROVED BY: Wayne Brown

COMMENTS:
None.

Arthur Lamb ("Lamb"), t/a Awesome Creations, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705082639).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Board's regulation(s):

BACKGROUND:

On June 14, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Joe Dance ("Dance") regarding Lamb. (Exh. C-1)

On May 10, 2004, Lamb entered into a verbal agreement, in the amount of \$3,500.00, with Dance to assemble a steel building at 576 Horse Landing Road, King William, Virginia 23086. (Exh. C-1)

On May 12, 2004, Dance paid Lamb \$1,750.00 in cash. (Exh. C-2)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

Lamb failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

On May 10, 2004, Lamb brought scaffolding to the subject property. On May 12, 2004, Lamb built three sections of the steel building, but the sections were built 13 feet high instead of 16 feet high. On May 13, 2004, Lamb dropped an arch while raising it and caused damage to three panels and two eaves. Lamb told Dance he would repair the damage because it was his fault. (Exh. C-1)

The last day Lamb performed work at the subject property was May 13, 2004. (Exh. C-1)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

In addition to the facts outlined in Count 2:

On June 8, 2004, Dance ordered the parts, in the amount of \$1,236.24, to replace the panels and eaves damaged by Lamb. (Exh. C-3) Dance hired Steel building to make the repairs and complete the project. (Exh. C-1)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On July 22, 2004, Assistant Director Wayne Mozingo, the Board's agent, sent a written request to Lamb at 7069 Adaline Lane, Mechanicsville, Virginia 23111, requesting a written response and supporting documents to the complaint filed with the board. The Board's agent requested a written response be received by August 6, 2004. (Exh. I-1)

On September 8, 2004, the Board's agent sent a written request, via certified mail, to Lamb at 7069 Adaline Lane, Mechanicsville, Virginia 23111, requesting a written response and supporting documents to the complaint filed with the board. The Board's agent requested a written response be received within five (5) days of receipt of the letter. (Exh. I-2 and I-3)

On September 28, 2004, the Mechanicsville Postmaster certified mail was delivered to Lamb at 7069 Adaline Lane, Mechanicsville, Virginia 23111. (Exh. I-6)

On September 29, 2004, the certified letter was returned by the United States Postal Service and was marked "Unclaimed." (Exh. I-4)

On December 2, 2004, the Board's agent attempted to hand deliver a written request to Lamb at 7069 Adaline Lane, Mechanicsville, Virginia 23111, requesting a written response

and supporting documents to the complaint filed with the board. The Board's agent requested a written response be received within five (5) days of receipt of the letter. (Exh. I-5) Since no one answered the door, the Board's agent put the letter on the front door. Approximately five minutes later, the Board's agent drove back by the address and observed that the letter placed on the front door was gone. (Exh. I-7)

Lamb failed to respond to an investigator seeking information in the investigation of a complaint filed with the board.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Christopher Patete, t/a Sturdy Built MFG

File Number: 2003-02576
License Number: 2701027175

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On October 26, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Christopher Patete, t/a Sturdy Built MFG ("Sturdy Built") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed and received.

On December 7, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Christopher Patete ("Patete"), Respondent; Kevin McNally ("McNally") and Walter Marston, Attorneys for Respondent; Brenda Kay Baker ("Baker"), Complainant; James Gillis ("Gillis") and Lonnie Walters, Witnesses; Joseph Haughwout, Staff Member; and Robert Burch, Presiding Board Member.

On February 4, 2005, a letter to reconvene the IFF was mailed, via certified mail, to Sturdy Built through its attorney, and to Patete at his home address. The letter also included the Amended Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mailings were each signed for and received.

On March 16, 2005, the IFF reconvened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Christopher Patete, Respondent; Kevin McNally, Attorney for Respondent; Brenda Kay Baker, Complainant; James Gillis, Witness; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Board Officer.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Amended Report of Findings:

In June 2001, Baker entered into a written contract with Sturdy Built to construct a two-car garage and second level storage area at the subject property.

Count 1: Board Regulation (Effective May 1, 1999)

The contract used in the transaction failed to contain three of the required subsections. Sturdy Built's failure to include subsections d, e, and h (contractor's license/certificate number, expiration date, class of license/certificate, and classifications or specialty services) in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.8.

During the IFF, McNally stated subsection d is on the contract and subsection e is satisfied because the contract specifies the homeowner is responsible for the permit. McNally also stated Patete will conform its contract to include its license expiration and specialty services.

Therefore, I recommend a monetary penalty of \$100.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective May 1, 1999)

On May 10, 2002, Danny Cox, Loudoun County Department of Building and Development, inspected the two-story garage at the subject property. In a letter dated May 15, 2002, Cox noted several building code violations found. In a letter dated January 13, 2003, James Gillis, Loudoun County Department of Building and Development, informed Baker of several building code violations, and directed Baker to arrange correction of the violations. D. Anthony Beale, a professional engineer, conducted an evaluation of the construction at the subject property. Beale noted many structural issues and deficiencies, as well as architectural and grading issues, found at the subject property.

During the IFF, Patete stated that it is the practice of his company to place the responsibility for applying and obtaining building permits on the consumer. Patete further stated he uses a standard form, called a "Notice to Proceed", that the customer fills out and sends to Patete to inform him that permits have been obtained, and work is ready to begin. However, this form only requests the permit number, and does not request a set of the permit plans.

During the IFF, McNally stated that Patete's conduct in this matter did not rise to the level of gross negligence, as it has been interpreted by case law.

The main issue in regard to the building code violations stem from Sturdy Built not following the Uniform Statewide Building Code requiring an approved set of building plans on site. The simple and obvious step of having the approved set of building plans on site would have prevented this whole situation. Patete's failure to obtain an approved set of building plans from the owner, prior to commencing work, and while performing work, is unconscionable, and constitutes gross negligence

Sturdy Built's actions constitute gross negligence in the practice of contracting and are a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$2,500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective May 1, 1999)

On July 27, 2001, Baker paid Sturdy Built \$5,523.00. On August 15, 2001, Baker paid Sturdy Built \$16,036.00. The contract specified Sturdy Built would substantially complete the work within sixty (60) business days. As of March 24, 2003, Sturdy Built failed to correct building code violations and complete construction of the two-car garage at the subject property.

During the IFF, Baker testified Patete has not come to the subject property to inspect the structure and Sturdy Built has made no effort to complete the work.

During the IFF, McNally stated Sturdy Built will not return to perform additional work because no permit has been issued for the structure Sturdy Built was contracted to build.

During the IFF, Patete testified the reason behind the work stoppage was an incorrect permit for the structure built at the subject property. Patete further stated he has not received notification from the Loudoun County building officials that he is authorized to continue working to abate the building code violations. Patete also stated Sturdy Built is willing to return to complete the work.

During the IFF, Gillis testified there were numerous correspondences from his office in reference to the violations cited in May 2002 and January 2003. Gillis also testified no plans were approved for the structure built by Sturdy Built. Contrary to Patete's testimony, Gillis stated Sturdy Built is authorized to return to abate the building code violations. Gillis also stated a new permit was obtained in January 2005.

Now that the requisite building permits have been obtained, Sturdy Built is authorized to return to the subject property to complete work. In the record, and in the testimony provided, Sturdy Built has stated it is willing to complete the work. Since Sturdy Built is willing to complete the work, the project has not been abandoned.

Therefore I recommend Count 3 be closed with a finding of no violation for Board regulation 18 VAC 50-22-260.B12.

By: _____

Mark Franko
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

AMENDED
REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 11, 2004 (amended February 3, 2005)

FILE NUMBER: 2003-02576
RESPONDENT: Christopher Patete, t/a Sturdy Built MFG
LICENSE NUMBER: 2701027175
EXPIRATION: December 31, 2005

SUBMITTED BY: James L. Guffey
APPROVED BY:

COMMENTS:

None.

Christopher Patete, t/a Sturdy Built MFG ("Sturdy Built"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701027175).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violations of the Code of Virginia and/or Board's regulations:

BACKGROUND:

On March 25, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Brenda Kay Baker ("Baker") regarding Sturdy Built. (Exh. C-1)

On June 2, 2001, Baker entered into a written contract with Sturdy Built, in the amount of \$20,077.00, to construct a two-car garage and second level storage area at 206 East Williamsburg Road, Sterling, Virginia 20164. (Exh. C-2) On June 2, 2001, Baker paid Sturdy Built \$500.00 by check. (Exh. C-1 and C-2)

Baker obtained building permit number B09063 for the work to be performed at the subject property. (Exh. C-1)

On July 27, 2001, Baker and Sturdy Built agreed to a written change order, in the amount of \$2,790.00, to change the sub-floor and siding. (Exh. C-3)

On July 24, 2001, Baker paid Sturdy Built \$5,523.00 by check. (Exh. C-4) On August 15, 2001, Baker paid Sturdy Built \$16,036.00. (Exh. C-5)

1. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of these regulations, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee/certificate holder or his agent. At a minimum the contract shall specify or disclose the following:
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local *requirements for building permits, inspections, and zoning*;
 - h. Contractor's name, address, license/certificate number, expiration date, class of license/certificate, and classification or specialty services.

FACTS:

The contract used by Sturdy Built failed to contain subsections: (d), (e), and (h) contractor's license number, expiration dated, class of license, and classifications or specialty services. (Exh. C-2)

2. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Gross negligence in the practice of contracting.

FACTS:

On May 10, 2002, Danny Cox ("Cox"), Building Inspector for Loudoun County, inspected the two-story garage at the subject property. In a letter dated May 15, 2002, Cox noted several building code violations found. (Exh. C-7)

In a letter dated January 13, 2003, James Gillis ("Gillis"), Building Inspector for Loudoun County, informed Baker of several building code violations at the subject property. Gillis directed Baker to arrange correction of the building code violations by January 16, 2003. (Exh. C-6)

D. Anthony Beale, P.E., of Advance Engineers Ltd., conducted a visual evaluation of the construction of the partially completed two story garage at the subject property. In a letter dated April 19, 2003, Beale outlined many structural issues and deficiencies, as well as other architectural and grading issues, found at the subject property. (Exh. C-8)

3. Board Regulation (Effective May 1, 1999)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

12. Abandonment, or the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part. (Unjustified cessation of work under the contract for a period of thirty days or more shall be considered evidence of abandonment.)

FACTS:

The contract specified "Upon the Owner's satisfaction of the conditions set forth elsewhere in this Contract relating to the Notice to Proceed, down payment, building permits and approved plans, and providing weather permits, Sturdy Built shall use its best efforts to substantially complete the work within 60 business days." (Exh. C-2)

As of March 24, 2003, Sturdy Built failed to correct the building code violations and complete construction of the two-car garage with storage loft at the subject property. (Exh. C-1)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Ralph Marks, t/a H & M Home Improvement

File Number: 2004-04059
License Number: 2705066276

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On February 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Ralph Marks ("Marks"), t/a H & M Home Improvement to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On March 16, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Ralph Marks, Respondent, nor anyone on his behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Ruth Williams ("R. Williams") entered into seven contracts with Marks. The first three contracts, agreed to in May 2002, were to perform work on the inside and outside of the subject property, and to perform work in the dining room and laundry room at the subject property. The fourth contract, agreed to in July 2002, was to perform additional work on the inside of the house at the subject property. The fifth, sixth, and seventh contracts, agreed to in September 2002, October 2002, and December 2002, respectively, were to perform additional work on the outside of the subject property.

Count 1: Board Regulation (Effective September 1, 2001) (SIX COUNTS)

The contracts used in the transactions, except the contract dated September 20, 2002, all failed to contain five of the provisions required by the Board's regulation.

Marks's failure to include subsections a, d, e, h, and i in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed for each count, for a total of \$1,500.00 and remedial education imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective September 1, 2001)

The contract dated September 20, 2002 failed to contain four of the provisions required by the Board's regulation.

Marks's failure to include subsections d, e, f, and h in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective September 1, 2001)

The total value of the contracts agreed to between R. Williams and Marks was \$60,390.00. Marks only holds a Class C contractor's license. Marks admitted that he contracted outside of his license class.

Marks's action of practicing in a class of license for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 4: Board Regulation (Effective September 1, 2001)

Between May 2002 and February 2003, Marks framed and built two room additions at the subject property. Marks's Class C contractor's license only has the home improvement contracting (HIC) specialty service.

Marks's action of practicing in a classification or specialty service for which he is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 5: Board Regulation (Effective September 1, 2001)

In October 2002, Marks obtained building, electrical, mechanical, and plumbing permits for the subject property. Marks obtained a final plumbing inspection, but failed to obtain final inspections for the building, electrical, and mechanical work performed, in violation of the Uniform Statewide Building Code.

Marks's failure to obtain final inspections is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 6: Board Regulation (Effective September 1, 2001)

In August 2003, Marks told R. Williams that he could not complete the work because he was out of money. R. Williams requested Marks complete the work by September 1, 2003. Marks did not complete the work, and left numerous items unfinished.

Marks's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 7: Board Regulation (Effective September 1, 2001)

R. Williams paid Marks \$49,735.00 towards the total contracted amount of \$60,390.00. Marks did not complete the work.

Marks's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 8: Board Regulation (Effective January 1, 2003)

In April 2004, in Hampton General District Court, R. Williams obtained a judgment against Marks, in the amount of \$6,660.00. Marks admitted that he did not have the money to satisfy the judgment, and he was not going to appeal. Marks stated he would set up a payment plan with R. Williams to pay the judgment. Marks has failed to satisfy the judgment.

Marks's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____

Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: December 23, 2004 (revised January 21, 2005)

FILE NUMBER: 2004-04059
RESPONDENT: Ralph Marks, t/a H & M Home Improvement
LICENSE NUMBER: 2705066276
EXPIRATION: November 30, 2005

SUBMITTED BY: Shelby Smith-Hill
APPROVED BY: David C. Dorner

COMMENTS:

None.

Ralph Marks ("Marks"), t/a H & M Home Improvement, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705066276).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On April 2, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Ruth Williams ("R. Williams") and Ayanna Williams ("A. Williams") regarding Marks. (Exh. C-1)

On May 2, 2002, Marks entered into a written contract, in the amount of \$6,340.00, with R. Williams to perform work on the outside of the house at 188 Semple Farm Road, Hampton, Virginia 23666. (Exh. C-2)

On May 2, 2002, Marks entered into a written contract, in the amount of \$11,500.00, with R. Williams to perform work on the inside of the house at the subject property. (Exh. C-3)

On May 2, 2002, Marks entered into a written contract, in the amount of \$2,500.00, with R. Williams to perform work in the new dining room and laundry room at the subject property. (Exh. C-4)

On July 22, 2002, Marks entered into a written contract, in the amount of \$2,500.00, with R. Williams perform work on the inside of the house at the subject property. (Exh. C-5)

On September 20, 2002, Marks entered into a written contract, in the amount of \$26,500.00, with R. Williams to perform work on the outside of the house at the subject property. (Exh. C-6)

On October 28, 2002, Marks entered into a written contract, in the amount of \$7,050.00, with R. Williams to perform work on the outside of the house at the subject property. (Exh. C-7)

On December 13, 2002, Marks entered into a written contract, in the amount of \$4,000.00, with R. Williams to perform work on the outside of the house at the subject property. (Exh. C-8)

Between May 2002 and February 2003, Marks framed and built two room additions at the subject property. (Exh. I-2)

On November 29, 2001, Marks was issued Class C contractor's license number 2705066276 with the home improvement contracting ("HIC") specialty service. (Exh. I-1)

1. Board Regulation (Effective September 1, 2001) SIX COUNTS

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contracts used by Marks in the transactions failed to contain subsections: a., d., e., h., and i. (Exh. C-2, C-3, C-4, C-5, C-7, and C-8)

2. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

- 9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The September 20, 2002, contract used by Marks in the transaction failed to contain subsections: d., e., f., and h. (Exh. C-6)

3. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

- 27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

Section 54.1-1100 of the Code of Virginia states "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500 . . ."

On June 2, 2004, Marks admitted he entered into the contracts outside his license because he was ignorant, made a foolish mistake, and worked as an agent for the homeowner. (Exh. I-3)

Marks practiced in a class of license for which he is not licensed.

4. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

18 VAC 50-22-30 of the Virginia Administrative Code states "'Home improvement contracting' (Abbr: HIC) means that service which provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The BLD classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings."

Marks practiced in a classification and specialty service for which he is not licensed.

5. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On October 3, 2002, Marks, as agent for R. Williams, obtained building permit number 02-02739, electrical permit number 02-01549, mechanical permit number 02-01377, and plumbing permit number 02-00767. On October 10, 2002, the final plumbing inspection was approved. (Exh. W-1)

As of April 26, 2004, Marks failed to obtain final inspections for building, electrical, and mechanical work performed at the subject property, in violation of Section 115.4 of the Uniform Statewide Building Code. (Exh. W-1)

6. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

In August 2003, Marks told R. Williams that he was out of money and could not complete the work. (Exh. I-2)

On August 19, 2003, R. Williams sent Marks a letter, via certified mail, requesting the work be completed by September 1, 2003. (Exh. C-9)

In September 2003, Marks told R. Williams that he had put \$5,000.00 of his own money into the job and he could not afford to complete the work. (Exh. I-3)

The last day Marks was at the subject property was in September 2003. (Exh. I-3)

As of June 2, 2004, Marks failed to return to complete the following items:

- Vinyl to be repaired
- Gutters to be repaired
- Shutters
- 3 replacement windows finishing work not done
- Flooring to be completed
- Complete door archway
- Pergo does not match
- Floors are not level
- Framing not complete
- No door locks
- Fireplace was not complete

- Door to master bedroom closet not installed
- Master bath fixtures not installed
- No caulking done
- Vinyl installation not done
- Repair security lights to working condition
- Complete installation of the rug
- Attic cover not installed
- Paint attic cover
- Light pole installed but not working
- Complete roof work. (Exh. I-2)

7. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 5:

Between June 18, 2002 and February 18, 2003, R. Williams paid Marks \$49,735.00 by checks. (Exh. C-10)

On March 3, 2004, in the Hampton General District Court, R. Williams filed a Warrant in Debt, in the amount of \$13,365.00, against Marks for breach of contract. (Exh. I-4)

Marks retained funds received for work not performed or performed only in part.

8. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On April 26, 2004, in the Hampton General District Court, R. Williams was awarded a \$6,660.00 judgment against Marks. (Exh. I-4)

On June 2, 2004, Marks admitted he does not have the money to satisfy the judgment and he was not going to appeal the judgment. Marks stated he would set up a payment plan with R. Williams to pay the judgment. (Exh. I-3)

As of January 21, 2005, Marks failed to satisfy the judgment. (Exh. I-4)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: National Restoration Specialists Inc.

File Number: 2004-05069
License Number: 2705063628

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On February 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to National Restoration Specialists Inc. ("NRS") through its attorney, Marc Jordan, at 7340 Grace Dr., Ste. 105, Columbia, MD 21044-2470. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. This certified mail was signed for and received.

A copy of the Notice was also mailed, via certified mail, to Kenneth McWilliams, Richard Pirozzi's attorney, at 1146 Walker Road, Ste. C, Great Falls, VA 22066. This certified mail was signed for and received.

A copy of the Notice was also mailed, via certified mail, to NRS to the address of record of 4861-B Telsa Drive, Bowie, MD 20715, and to the following addresses:

3262 Superior Lane
Bowie, MD 20715

1450 Mercantile Lane, Ste. 227
Largo, MD 20774

The certified mailings sent to the address of record and to the address in Bowie, Maryland were signed for and received. The certified mail sent to the address in Largo, Maryland was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On March 16, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Robert and Mary Smith ("the Smiths"), Complainants; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Richard Pirozzi, Responsible Management for NRS, Respondent, nor anyone on behalf of NRS appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Based on the record and the testimony during the IFF, NRS's actions are outlandish and egregious to warrant sanctions to the fullest measure allowable by the Board.

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain one of the provisions required by the Board's regulation.

NRS's failure to include subsection h in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

In November 2003, Robert Smith ("Smith") contracted with NRS to perform repairs at the subject property. The contract specified work would commence two (2) weeks from the date of contract, and would be completed one (1) week from the start of work. Two weeks after signing the contract, Smith contacted NRS regarding the commencement of work. NRS told Smith several times that work would begin; however NRS never began the work.

NRS's failure to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

Smith paid NRS \$2,335.00 towards the contract amount of \$4,678.71. NRS never began work. Smith made several requests for NRS to refund his money. NRS never responded to Smith, and never returned his money.

NRS's retention of funds received for work not performed is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

In September 2004, the Board's agent requested NRS provide documents, including copies of all contracts entered into in Virginia and all documents related to those contracts, from the period of January 1, 2003 to July 1, 2004. The Board's agent made subsequent requests for the documents. The attorney for NRS stated NRS would attempt to comply with the request for documents. NRS failed to submit the documents as requested.

NRS's failure to provide the investigator with requested documents is a violation of Board Regulation 18 VAC 50-22-260.B.12. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

In August 2004, the attorney for NRS stated NRS refunded Smith's money. Smith never received a refund.

NRS's action of providing the investigator with false or misleading information is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 25, 2005 (revised January 31, 2005)

FILE NUMBER: 2004-05069
RESPONDENT: National Restoration Specialists Inc.
LICENSE NUMBER: 2705063628
EXPIRATION: July 31, 2005

SUBMITTED BY: David C. Dorner
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

National Restoration Specialists Inc. ("NRS") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705063628).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On June 17, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Robert Smith ("Smith") regarding NRS. (Exh. C-1)

On November 19, 2003, NRS entered into a written contract, in the amount of \$4,678.71 with Smith to repair the gutters, downspouts, fascia, soffitt, and framing, replace plywood sheathing, remove metal roofing, install asphalt shingles, demolish the chimney, and repair plumbing at 318 Lee Street, Hampton, Virginia 23669. (Exh. C-2)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services

FACTS:

The contract used by NRS failed to contain subsection: h. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The contract specified an estimated start date of "2 weeks" and an estimated completion date of "1 week from start of work." (Exh. C-2)

Two weeks after signing the contract, Smith contacted NRS regarding commencement of work. NRS told Smith several times that work would commence; however, NRS failed to show for scheduled appointments. (Exh. C-1)

As of June 16, 2004, NRS failed to commence work or deliver materials. (Exh. C-1)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 2:

On November 19, 2003, Smith paid NRS \$2,335.00 by check. (Exh. C-3)

On March 22, 2004, Smith sent NRS certified letters to three offices demanding NRS return, within fifteen (15) days, the funds received for work not performed. (Exh. C-4)

Smith made several attempts to contact NRS regarding a refund; however, NRS did not respond. (Exh. C-1)

As of January 24, 2005, NRS failed to return the funds received for work not performed. (Exh. I-3)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

FACTS:

On September 21, 2004, Assistant Director David C. Dorner, the Board's agent, sent NRS a written request, via email to Kenneth L. McWilliams ("McWilliams"), attorney representing NRS, requesting NRS provide complete and legible copies of contracts and all documents related to contracts entered into within the Commonwealth of Virginia between January 1, 2003, and July 1, 2004. The Board's agent requested the documents be provided by September 30, 2004. (Exh. I-1)

On October 4, 2004, at 2:08 p.m., the Board's agent made a follow-up request by e-mail to McWilliams concerning the September 21, 2004, request for contracts and documents. (Exh. I-2)

In an email dated October 4, 2004, McWilliams stated, "When we relayed your request to our client they stated that it would take some time to retrieve the requested information." McWilliams further stated, "Our client advised us that they would attempt to comply with your request for records." (Exh. R-2)

As of January 24, 2005, NRS failed to produce to the Board's agent the documents requested.

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

In a written response dated, August 10, 2004, McWilliams stated, "NRSI has cancelled this job and all monies deposited by the consumer have been returned. Our understanding is the consumer is satisfied with this resolution." (Exh. R-1)

As of January 25, 2005, Smith has not heard from NRS, nor has he received a refund of his money. (Exh. I-3)

NRS provided false or misleading information to an investigator seeking information in the investigation of a complaint filed with the board.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: National Restoration Specialists Inc.

File Number: 2005-00076
License Number: 2705063628

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On February 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to National Restoration Specialists Inc. ("NRS") through its attorney, Marc Jordan, at 7340 Grace Dr., Ste. 105, Columbia, MD 21044-2470. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. This certified mail was signed for and received.

A copy of the Notice was also mailed, via certified mail, to Kenneth McWilliams, Richard Pirozzi's attorney, at 1146 Walker Road, Ste. C, Great Falls, VA 22066. This certified mail was signed for and received.

A copy of the Notice was also mailed, via certified mail, to NRS to the address of record of 4861-B Telsa Drive, Bowie, MD 20715, and to the following addresses:

3262 Superior Lane
Bowie, MD 20715

1450 Mercantile Lane, Ste. 227
Largo, MD 20774

The certified mailings sent to the address of record and to the address in Bowie, Maryland were signed for and received. The certified mail sent to the address in Largo, Maryland was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On March 16, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Betsy Overman ("Overman"), Complainant; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Richard Pirozzi, Responsible Management for NRS, Respondent, nor anyone on behalf of NRS appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Overman entered into three contracts with NRS. The first and second contracts, agreed to in November 2003 and January 2004, respectively, were for repairing storm damage to the subject property. The third contract, agreed to in March 2004, was to perform improvements to the subject property.

The first contract specified work would begin in three (3) to six (6) weeks after a work scope was approved, and would be completed within thirty (30) to sixty (60) days. The second contract specified work would begin ten (10) days from the date of the contract, and would be completed in three (3) to four (4) weeks. The third contract specified work be completed ten (10) days to two (2) weeks from the start of work.

Based on the record and the testimony during the IFF, NRS's actions are outlandish and egregious to warrant sanctions to the fullest measure allowable by the Board.

Count 1: Board Regulation (Effective January 1, 2003)

The contracts used in the transaction failed to contain one of the provisions required by the Board's regulation.

NRS's failure to include subsection h in the contracts is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

Between November 2003 and March 2004, NRS had not commenced work, even though a scope of work for repairing the storm damage was issued in January 2004. After agreeing to the third contract in March 2004, NRS commenced work. NRS removed old siding from the subject property, but did not complete the work. Overman made several attempts to contact NRS regarding the work. In June 2004, NRS promised Overman it would complete the work. NRS failed to complete the work. Overman completed some of the work herself.

NRS's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

NRS's failure to comply with the terms of its contracts is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

Overman paid NRS \$17,697.53 towards the total contracted amount of \$23,180.00. In June 2004, Overman requested NRS refund money it received for work it did not perform, or performed only in part. NRS failed to refund Overman her money.

NRS's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

In July 2004, Overman hired a home inspector to inspect the subject property. The home inspector noted several problems with the siding, trim and roof at the subject property. In November 2004, Overman hired another contractor to correct the work improperly done by NRS, and to complete the work at the subject property.

NRS's negligence is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

In August 2004, the Board's agent requested a written response and supporting documents to the complaint filed with the Board. NRS submitted a response, but did not provide additional documentation. In September 2004, the Board's agent requested NRS to provide the Board with documents, including copies of all contracts entered into in Virginia and all documents related to those contracts, from the period of January 1, 2003 to July 1, 2004. The Board's agent made subsequent requests for the documents. The attorney for NRS stated NRS would attempt to comply with the request for documents. NRS failed to submit the documents as requested.

NRS's failure to provide the investigator with requested documents is a violation of Board Regulation 18 VAC 50-22-260.B.12. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 7: Board Regulation (Effective January 1, 2003)

In August 2004, in Newport News General District Court, Overman obtained a judgment against NRS, in the amount of \$15,000.00. In September 2004, a representative of NRS informed the Board's agent it was attempting to satisfy the judgment. NRS has failed to satisfy the judgment.

NRS's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 8: Board Regulation (Effective January 1, 2003)

In December 2004, the Postmaster for Bowie, Maryland informed the Board's agent NRS had changed its address. NRS failed to report the change of address to the Board.

NRS's failure to report, in writing, of a change of address within thirty (30) days of a change is a violation of Board Regulation 18 VAC 50-22-230.B. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: December 3, 2004 (revised January 31, 2005)

FILE NUMBER: 2005-00076
RESPONDENT: National Restoration Specialists Inc.
LICENSE NUMBER: 2705063628
EXPIRATION: July 31, 2005

SUBMITTED BY: David C. Dorner
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

National Restoration Specialists Inc. ("NRS") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705063628).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On July 7, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Betsy Overman ("Overman") regarding NRS. (Exh. C-1)

On November 10, 2003, NRS entered into a written contract, in the amount of "As Per Scope", with Overman to perform approved work scope at 205 Deauville Circle, Newport News, Virginia 23606. (Exh. C-2)

On January 10, 2004, National Catastrophe Center of Excellence inspected the subject property and provided Overman a summary of her insurance claim. (Exh. C-3)

On January 23, 2004, NRS entered into a written contract, in the amount of \$16,287.00, with Overman to perform the approved work scope at the subject property. (Exh. C-2a)

On March 2, 2004, NRS entered into a written contract, in the amount of \$6,393.00, with Overman to install siding, trim, shutters, and gutters at the subject property. (Exh. C-2b)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services

FACTS:

The contracts used by NRS failed to contain subsection: h. (Exh. C-2, C-2a, and C-2b)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

The November 10, 2003, contract specified an estimated start date of "3-6 weeks from approved scope" and an estimated completion date of "within 30 to 60 days start." (Exh. C-2)

The January 23, 2004, contract specified an estimated start date of "10 days" and an estimated completion date of "3-4 wks." (Exh. C-2a)

The March 2, 2004, contract specified an estimated start date of "appx 7 days after completion of roof materials" and an estimated completion date of "10 dys – 2 wks weather permitting." (Exh. C-2b)

After signing the November 10, 2003 and January 23, 2004 contracts, Overman contacted NRS regarding commencement of work. After March 2, 2004, NRS commenced work. Prior to May 20, 2004, NRS removed the old siding from the subject property. (Exh. I-6)

Overman made several attempts to contact NRS, via facsimile and telephone, regarding the incomplete work. (Exh. C-5, C-6, C-7, C-8, C-9, C-10, and I-6)

On June 17, 2004, NRS told Overman it would return to the subject property with a new crew and complete the work. (Exh. C-7)

As of December 10, 2004, NRS failed to complete the work contracted for. Overman completed the painting and replacement of kitchen cabinets and wallpaper herself. (Exh. I-6)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

In addition to the facts outlined in Count 2:

NRS failed to comply with the terms of the contract.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 2:

On November 12, 2003, Overman paid NRS \$500.00 by check. (Exh. C-4a) On February 4, 2004, Overman paid NRS \$6,001.00 by check. (Exh. C-4b) On March 2, 2004, Overman paid NRS \$3,196.53 by check. (Exh. C-4c) On March 2, 2004, Overman paid NRS \$4,000.00 by check. (Exh. C-4d) On May 20, 2004, Overman paid NRS \$4,000.00 by check. (Exh. C-4e)

On June 14, 2004, Overman sent NRS a letter, via facsimile, requesting NRS return funds received for work not performed or performed only in part. (Exh. C-8)

On August 2, 2004, in the Newport News General District Court, Overman filed a Warrant in Debt, in the amount of \$15,000.00, against NRS for violations of the Consumer Protection Act, Federal Door to Door Sales, common law fraud, and negligence. (Exh. I-7)

NRS retained funds paid by Overman for work not performed or performed only in part.

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

On July 27, 2004, at the request of Overman, Dwight Denison ("Denison"), a certified home inspector for Amerispec, conducted an inspection of the subject property. In the inspection report, Denison noted several problems with the siding, trim, and roof at the subject property. (Exh. W-1)

On November 8, 2004, Jim Haynes Siding entered into a written contract, in the amount of \$12,000.00, with Overman to replace the siding and trim work performed by NRS and perform work not completed by NRS at the subject property. (Exh. W-2)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's

possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

FACTS:

On August 16, 2004, Assistant Director David C. Dorner, the Board's agent, made a written request to NRS at the address of record of 4861-B Telsa Drive, Bowie, Maryland 20715, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the response be received by August 26, 2004. (Exh. I-1)

On September 21, 2004, Assistant Director David C. Dorner, the Board's agent, sent NRS a written request, via email to Kenneth L. McWilliams ("McWilliams"), attorney representing NRS, requesting NRS provide complete and legible copies of contracts and all documents related to contracts entered into within the Commonwealth of Virginia between January 1, 2003, and July 1, 2004. The Board's agent requested the documents be provided by September 30, 2004. (Exh. I-2)

On October 4, 2004, at 2:08 p.m., the Board's agent made a follow-up request by e-mail to McWilliams concerning the September 21, 2004, request for contracts and documents. (Exh. I-4)

In an email dated October 4, 2004, McWilliams stated, "When we relayed your request to our client they stated that it would take some time to retrieve the requested information." McWilliams further stated, "Our client advised us that they would attempt to comply with your request for records." (Exh. R-1)

On October 8, 2004, 5:27 p.m., the Board's agent made a follow-up request by e-mail to McWilliams requesting a time frame on the records request. (Exh. I-5)

As of December 3, 2004, NRS failed to produce to the Board's agent the documents requested.

7. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On August 25, 2004, in the Newport News General District Court, Overman was awarded a \$15,000.00 judgment against NRS. The judgment was based on fraud. (Exh. I-7)

On September 14, 2004, Tom Conlan ("Conlan"), Vice President and CEO of NRS, stated NRS is attempting to satisfy Overman. Conlan further stated NRS was aware of the court hearing, but felt it to be financially in its best interest not to go to court. (Exh. I-3)

NRS failed to satisfy the judgment.

8. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- B. Any change of address shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of address.

FACTS:

On December 8, 2004, the Bowie, Maryland Postmaster certified NRS moved from 4861-B Telsa Drive, Bowie, Maryland 20715 and its forwarding address was 3262 Superior Lane, Bowie, Maryland 20715. (Exh. I-8)

On January 24, 2005, a search of the licensing records revealed the address of record for NRS is 4861-B Telsa Drive, Bowie, Maryland 20715. (Exh. I-9)

NRS failed to report in writing to the board within thirty (30) days of a change of its address.

IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS

Re: National Restoration Specialists Inc.

File Number: 2005-01679
License Number: 2705063628

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On February 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to National Restoration Specialists Inc. ("NRS") through its attorney, Marc Jordan, at 7340 Grace Dr., Ste. 105, Columbia, MD 21044-2470. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. This certified mail was signed for and received.

A copy of the Notice was also mailed, via certified mail, to Kenneth McWilliams, Richard Pirozzi's attorney, at 1146 Walker Road, Ste. C, Great Falls, VA 22066. This certified mail was signed for and received.

A copy of the Notice was also mailed, via certified mail, to NRS to the address of record of 4861-B Telsa Drive, Bowie, MD 20715, and to the following addresses:

3262 Superior Lane
Bowie, MD 20715

1450 Mercantile Lane, Ste. 227
Largo, MD 20774

The certified mailings sent to the address of record and to the address in Bowie, Maryland were signed for and received. The certified mail sent to the address in Largo, Maryland was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On March 16, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Edward Lewis ("Lewis"), Complainant; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Richard Pirozzi, Responsible Management for NRS, Respondent, nor anyone on behalf of NRS appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Based on the record and the testimony during the IFF, NRS's actions are outlandish and egregious to warrant sanctions to the fullest measure allowable by the Board.

Count 1: Board Regulation (Effective January 1, 2003)

The contracts used in the transaction failed to contain one of the provisions required by the Board's regulation.

NRS's failure to include subsection h in the contracts is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

In September 2003, Lewis contracted with NRS to repair storm damage at the subject property. After obtaining an assessment of damage at the subject property, the Federal Emergency Management Agency issued a check to Lewis and his mortgage company for his flood insurance claim. The check was given to NRS, which signed a receipt indicating it received the check and would forward the check to Lewis's mortgage company. Lewis authorized his mortgage company to sign, release, and forward the insurance draft to NRS. NRS deposited the check into its corporate account, without obtaining the endorsement of the mortgage company. The attorney for NRS admitted to the Board's agent that NRS deposited the check without obtaining the mortgage company's endorsement.

NRS's failure to deliver the insurance check to the mortgage company, and obtain its endorsement, constitutes misconduct in the practice of contracting, in violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

The contract specified work would begin when a scope of work was approved, and would be completed in three (3) to four (4) weeks. NRS did perform some work, but ceased working when it received Lewis's insurance check in December 2003. NRS never returned to resume or complete the work.

NRS's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

NRS's failure to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

After NRS received the insurance check, and failed to resume work, Lewis made several attempts to contact NRS regarding a refund. NRS never refunded Lewis any of his money.

NRS's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

In September 2004, the Board's agent requested NRS provide the Board with documents, including copies of all contracts entered into in Virginia and all documents related to those contracts, from the period of January 1, 2003 to July 1, 2004. The Board's agent made subsequent requests for the documents. The attorney for NRS stated NRS would attempt to comply with the request for documents. NRS failed to submit the documents as requested.

NRS's failure to provide the investigator with requested documents is a violation of Board Regulation 18 VAC 50-22-260.B.12. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By: _____
Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 12, 2005 (revised January 31, 2005)

FILE NUMBER: 2005-01679
RESPONDENT: National Restoration Specialists Inc.
LICENSE NUMBER: 2705063628
EXPIRATION: July 31, 2005

SUBMITTED BY: David C. Dorner
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

National Restoration Specialists Inc. ("NRS") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705063628).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On October 18, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Edward Lewis ("Lewis") regarding NRS. (Exh. C-1)

On September 22, 2003, NRS entered into a written contract, in the amount of "As Per Scope", with Lewis to remove carpet and perform work per the scope of the insurance claim at 132 Waterfront Drive, Chesapeake, Virginia 23322. (Exh. C-2)

On October 30, 2003, Ray Meyer ("Meyer"), claims adjuster for TCS-Thorne Claims Service, Inc., conducted an assessment of the damage. Meyer estimated the total claim

payable was \$35,976.45, which was \$45,683.00 for the cost of repairs minus \$9,206.55 for depreciation and plus \$500.00 for the deductible. (Exh. C-2a)

On December 5, 2003, NRS obtained building permit number B0308892 for the work to be performed at the subject property. (Exh. I-3)

On December 19, 2003, Lewis signed a "Contract Statement," which specified an adjusted contract amount of \$44,927.17 equaling \$35,976.45 for the original contract amount and \$8,950.32 for change orders. (Exh. C-2b)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The contract used by NRS in the transaction failed to contain subsection: h. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On November 24, 2003, Federal Emergency Management Agency issued a \$35,976.45 check made payable to Lewis and Option One Mortgage for a flood claim. (Exh. C-3)

On December 19, 2003, NRS provided Lewis with a receipt indicating it received \$35,967.45. The receipt indicated, "check to be forwarded to mortgage co. for draw schedule." (Exh. C-3a)

On December 19, 2003, Lewis signed a "Mortgage Affidavit" form authorizing Option One Mortgage "to sign, release, and forward said insurance draft" to NRS. (Exh. C-4)

On December 19, 2003, NRS deposited the check in its account at the Bank of America without the endorsement of Option One Mortgage. (Exh. C-3)

In a written response dated November 1, 2004, Kenneth McWilliams ("McWilliams"), attorney representing NRS, stated, "In this case, the NRSI manager involved, Mr. Blumling, departed from standard procedure and deposited the check into NRSI's corporate account without having first obtained the mortgage company's endorsement." (Exh. R-1)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

The contract specified an estimated start date of "when approved" and an estimated completion date of "3-4 weeks." (Exh. C-2)

NRS did remove some sub-flooring, sheet rock, interior trim and molding, bathroom fixtures, and two ceilings in a bedroom and foyer. (Exh. I-1)

On December 19, 2003, NRS ceased work at the subject property. Lewis made several attempts to contact NRS regarding completion of the work. (Exh. I-1)

The last day NRS performed work at the subject property was December 19, 2003. (Exh. I-1)

As of November 9, 2004, NRS failed to complete work at the subject property. (Exh. I-2)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

In addition to the facts outlined in Count 3:

NRS failed to comply with the terms of the contract.

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 2 and Count 3:

Lewis made several attempts to contact NRS regarding a refund. As of November 9, 2004, NRS failed to return funds paid for work not performed or performed only in part. (Exh. I-1)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

FACTS:

On September 21, 2004, Assistant Director David C. Dorner, the Board's agent, sent NRS a written request, via email to Kenneth L. McWilliams ("McWilliams"), attorney representing NRS, requesting NRS provide complete and legible copies of contracts and all documents related to contracts entered into within the Commonwealth of Virginia between January 1, 2003, and July 1, 2004. The Board's agent requested the documents be provided by September 30, 2004. (Exh. I-4)

On October 4, 2004, at 2:08 p.m., the Board's agent made a follow-up request by e-mail to McWilliams concerning the September 21, 2004, request for contracts and documents. (Exh. I-5)

In an email dated October 4, 2004, McWilliams stated, "When we relayed your request to our client they stated that it would take some time to retrieve the requested information." McWilliams further stated, "Our client advised us that they would attempt to comply with your request for records." (Exh. I-6)

As of January 24, 2005, NRS failed to produce to the Board's agent the documents requested.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: National Restoration Specialists Inc.

File Number: 2005-02642
License Number: 2705063628

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On February 17, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to National Restoration Specialists Inc. ("NRS") through its attorney, Marc Jordan, at 7340 Grace Dr., Ste. 105, Columbia, MD 21044-2470. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. This certified mail was signed for and received.

A copy of the Notice was also mailed, via certified mail, to Kenneth McWilliams, Richard Pirozzi's attorney, at 1146 Walker Road, Ste. C, Great Falls, VA 22066. This certified mail was signed for and received.

A copy of the Notice was also mailed, via certified mail, to NRS to the address of record of 4861-B Telsa Drive, Bowie, MD 20715, and to the following addresses:

3262 Superior Lane
Bowie, MD 20715

1450 Mercantile Lane, Ste. 227
Largo, MD 20774

The certified mailings sent to the address of record and to the address in Bowie, Maryland were signed for and received. The certified mail sent to the address in Largo, Maryland was returned by the United States Postal Service, and marked as "Not Deliverable as Addressed, Unable to Forward."

On March 16, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Richard Zasimowich ("Zasimowich"), Complainant; Geraldine Zasimowich, Witness; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer. Neither Richard Pirozzi, Responsible Management for NRS, Respondent, nor anyone on behalf of NRS appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Based on the record and the testimony during the IFF, NRS's actions are outlandish and egregious to warrant sanctions to the fullest measure allowable by the Board.

Count 1: Board Regulation (Effective January 1, 2003)

In October 2003, Richard Zasimowich ("Zadimowich") contracted with NRS to repair flood damage at the subject property. In December 2003, NRS commenced work. In January 2004, Zasimowich's insurance company issued a check to Zasimowich and his mortgage company. At the request of NRS, Zasimowich endorsed the check and gave it to NRS. NRS informed Zasimowich the check would be turned over to the mortgage company. NRS deposited the check into its corporate account, without obtaining the endorsement of the mortgage company.

NRS's failure to deliver the insurance check to the mortgage company, and obtain its endorsement, *constitutes misconduct in the practice of contracting, in violation of Board Regulation 18 VAC 50-22-260.B.6.* Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

NRS did perform some work, but ceased working when it received Zasimowich's insurance check in January 2004. NRS never returned to resume or complete the work. Zasimowich made numerous attempts to contact NRS, but NRS never responded. In October 2004, a representative from NRS visited the subject property and promised Zasimowich that it would return to complete the work. NRS never returned to complete work at the subject property.

NRS's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

NRS failed to comply with the terms of the contract.

NRS's failure to comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

After NRS received the insurance check, it failed to resume work. NRS only completed 10% of the work.

NRS's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

In January 2005, the Board's agent requested NRS to provide a written response and supporting documents to the complaint filed with the Board. NRS failed to respond to the Board's agent's request.

NRS's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 28, 2005 (revised February 16, 2005)

FILE NUMBER: 2005-02642
RESPONDENT: National Restoration Specialists, Inc.
LICENSE NUMBER: 2705063628
EXPIRATION: July 31, 2005

SUBMITTED BY: David C. Dorner
APPROVED BY: M. Wayne Brown

COMMENTS:

None.

National Restoration Specialists Inc. ("NRS") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705063628).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On December 23, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Richard Zasimowich ("Zasimowich") regarding NRS. (Exh. C-1)

On October 21, 2003, Selective Insurance Company provided Zasimowich with a report of estimated damages sustained on September 18, 2003, at 81 Messick Road, Poquoson, Virginia 23662. The report estimated the net amount claim was \$25,210.38, which was \$29,436.15 for the full cost of repairs minus \$3,225.77 for depreciation and plus \$1,000.00 for the deductible (Exh. C-3)

On October 31, 2003, NRS entered into a written contract, in the amount of "Per Scope", with Zasimowich to perform work at 81 Messick Road, Poquoson Virginia 23662. The contract was signed by Russell Thomas ("Thomas") on behalf of NRS. (Exh. C-2a)

After October 31, 2003, Mike Whalen ("Whalen") of NRS told Zasimowich the contract written by Thomas could not be found. Whalen of NRS writes another written contract, in the amount of "Insurance Proceeds", with Zasimowich to repair flood damage per the insurance scope at the subject property. (Exh. C-2) (NOTE: The contract was backdated to October 29, 2003.)

In December 2003, NRS commenced work. (Exh. I-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

The contracts specified, "The Buyer(s) agree to deliver the insurance check and/or pay in cash the cost of goods and services as described below. Upon substantial completion of the work, Buyer agrees to deliver the balance of the insurance check and/or pay cash the balance of the contract." (Exh. C-2 and C-2a)

On January 8, 2004, Selective Insurance Company issued a \$27,805.13 check to Zasimowich and Citifinancial. (Exh. C-4)

At the request of Mike Whalen ("Whalen"), area supervisor for NRS, Zasimowich endorsed the check and gave Whalen the check. (Exh. C-4 and I-1) Whalen told Zasimowich he would turn the check over to Citifinancial. (Exh. I-1)

On January 20, 2004, NRS deposited the check in its account at Bank of America, without the endorsement of Citifinancial. (Exh. C-4 and I-1)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

In December 2003, NRS began removal of damaged walls and flooring. In the first three weeks of January 2004, NRS began replacement of sub-flooring on the first floor. (Exh. I-1)

After January 2004, NRS ceased work at the subject property. (Exh. I-1)

Zasimowich made numerous attempts to contact NRS. The number to the Norfolk office was disconnected. Zasimowich left several messages with the Maryland office, but NRS failed to respond. (Exh. I-1)

In October 2004, Tom Conlan ("Conlan"), a representative from NRS, visited the subject property, reviewed Zasimowich's contract, and surveyed the property. Conlan promised Zasimowich that NRS would return and complete the work, however, NRS has never returned. (Exh. I-1)

The last time NRS performed work at the subject property was in January 2004. (Exh. I-1)

As of December 20, 2004, NRS only completed 10% of the work and failed to complete the work contracted for. (Exh. I-1 and I-5)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

In addition to the facts outlined in Count 1 and Count 2:

NRS failed to comply with the terms of the contract.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 2 and Count 3:

NRS retained funds for work not performed or performed only in part.

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On December 8, 2004, the Postmaster in Bowie, Maryland certified NRS moved from 4861-B Telsa Drive, Bowie, Maryland 20715 and the forwarding address is 3262 Superior Lane, Bowie, Maryland 20715. (Exh. I-4)

On January 10, 2005, Assistant Director David Dorner, the Board's agent, sent a written request to NRS at the address of record of 4861-B Telsa Drive, Bowie, Maryland 20715, and to NRS at 3262 Superior Lane, Bowie, Maryland 20715, requesting a written response and relevant documents to the complaint filed with the Board. The Board's agent requested the written response and relevant documents be received by January 21, 2005. (Exh. I-2 and I-3)

As of January 28, 2005, NRS failed to respond an investigator seeking information in the investigation of a complaint filed with the Board.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Michael E. Armstrong & Terry A. Porter, t/a Anything Wood

File Number: 2004-03422
License Number: 2705079204

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On February 3, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Michael E. Armstrong & Terry A. Porter, Anything Wood ("Anything Wood") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On March 16, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Michael Armstrong ("Armstrong") and Terry Porter ("Porter"), Respondents; Marc Argenzio ("M. Argenzio") and Kim Argenzio ("K. Argenzio"), Complainants; Joseph Haughwout, Staff Member; and Mark Franko, Presiding Officer.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

During the IFF, it was noted on the record that Anything Wood had not commenced work on the second story of the log cabin at the subject property.

During the IFF, Porter stated he initially submitted a bid to M. Argenzio in August 2003, in the amount of \$66,068.00, to construct the log cabin and deck. Porter and Armstrong began work on the subject property in September 2003, prior to being licensed by the Board. Anything Wood obtained its license on September 30, 2003. Anything Wood later submitted a reduced bid, in the amount of \$60,011.04. Porter further stated the agreement between the parties was for Anything Wood to be paid on a weekly basis for work performed, rather than a fixed contract price.

Count 1: Board Regulation (Effective January 1, 2003)

In October 2003, Marc and Kim Argenzio ("the Argenzios") received a written bid from Anything Wood to frame a log cabin, deck and porch roof at the subject property. The bid reflected the name Michael Armstrong. The bid reflected neither the name of the firm, nor its trade name, as was issued on the license.

During the IFF, Porter stated he did not know about the requirement to operate in the name in which his contractor's license was issued.

Anything Wood's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

Anything Wood submitted a bid for work to the Argenzios, for which it performed some work and was paid; however no contract was ever entered into by the parties.

During the IFF, Porter stated he only provided an estimate to the Argenzios, but did not enter into a written contract to perform the work.

Anything Wood's failure to make use of a written contract is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

The bid submitted by Anything Wood was for a total project value of \$60,011.04. However, Anything Wood only holds a Class C contractor's license.

During the IFF, Porter stated he was unaware of the limitations of a Class C contractor's license. Porter further stated it was his belief that if he priced portions of the work under \$7,500.00, then he would be compliant with the requirements of the license.

Anything Wood's action of practicing in a class of license for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

Anything Wood commenced work soon after being hired by the Argenzios in October 2003, but ceased work in January 2004. In March 2004, the Argenzios hired another contractor to finish the work, which had only been 40% completed.

During the IFF, M. Argenzio stated he continued to make payments at the request of the contractor, and that he also provided additional tools and materials to Anything Wood. M. Argenzio further stated that the terms of his construction loan from the bank would not permit him to pay Anything Wood for work that the bank could not verify as completed. At the time Anything Wood had stopped working at the subject property, approximately half of the construction loan amount had been paid to Anything Wood. M. Argenzio stated that when Anything Wood requested an additional draw, and he told them he could not make the payment because his bank would not permit it, Anything Wood stopped working. M. Argenzio could not make the payments in accordance with the newly presented terms (i.e. a larger draw per week), without a specified completion date for the project.

During the IFF, Porter stated Anything Wood stopped working when M. Argenzio would not pay any additional money. Porter stated M. Argenzio told him that M. Argenzio would not pay anymore money until the work was completed. Porter further stated Anything Wood incurred additional costs because Porter and Armstrong were driving from Richmond to Fredericksburg to perform the work.

Based on the testimony provided, it appears Anything Wood obtained its license for this specific project without understanding what the work would actually entail and their responsibilities as a licensee. Now that this project is behind them, the license is no longer needed.

Anything Wood's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$500.00 be imposed, and that renewal of its license be denied.

Count 5: Board Regulation (Effective January 1, 2003)

The Argenzios paid Anything Wood \$30,050.00 towards the total project amount of \$60,011.04. Anything Wood failed to complete the work, and failed to return money received for work it did not perform, or performed only in part.

Since there is no contract for the project, it is not clear if this was a stipulated sum project, or a time and materials project.

Therefore, I recommend Count 5 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.16.

Count 6: Board Regulation (Effective January 1, 2003)

In March 2004, the Board's agent requested Anything Wood to provide a written response and supporting documents to the complaint filed with the Board. In April 2004, the Board's agent made a second request to Anything Wood by certified mail. Anything Wood did not respond to the Board's agent.

During the IFF, Armstrong stated he did not receive the certified mailing sent by the Board's agent, which is why Anything Wood did not respond. Porter stated that if they had received the Board's agent's letter, they would have responded.

It is my opinion that the testimony provided by Porter and Armstrong regarding their failure to receive the Board's agent's request for information is not credible, since Anything Wood received the Board's mailings regarding the IFF.

Anything Wood's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

By: _____
Mark Franko
Presiding Officer

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 6, 2005 (revised January 21, 2005)

FILE NUMBER: 2004-03422
RESPONDENT: Michael E. Armstrong & Terry A. Porter, t/a Anything Wood
LICENSE NUMBER: 2705079204
EXPIRATION: September 30, 2005

SUBMITTED BY: Sherell Queen
APPROVED BY: Linda J. Boswell

COMMENTS:

None.

Michael E. Armstrong & Terry A. Porter, t/a Anything Wood ("Anything Wood"), was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705079204).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On February 13, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Marc and Kim Argenzio ("the Argenzios") regarding Mike Armstrong. (Exh. C-1)

On September 12, 2003, the Argenzios paid Mike Armstrong \$5,050.00 by check. (Exh. C-3)

On October 6, 2003, Michael Armstrong submitted a written bid, in the amount of \$60,011.04, to the Argenzios to frame a log cabin, deck, and porch roof at 8536 Furnace Road, Spotsylvania County, Virginia. (Exh. C-2)

On October 6, 2003, the Argenzios paid Terry Porter \$3,000.00 by check. On October 14, 2003, the Argenzios paid Terry Porter \$2,000.00 by check. On October 20, 2003, the Argenzios paid Mike Armstrong \$5,000.00 by check. On October 26, 2003, the Argenzios paid Terry Porter \$5,000.00 by check. On November 25, 2003, the Argenzios paid Mike Armstrong \$5,000.00 by check. On November 25, 2003, the Argenzios paid Terry Porter \$5,000.00 by check. (Exh. C-3)

On September 30, 2003, Anything Wood was issued Class C contractor's license number 2705079204 as a general partnership. Michael E. Armstrong, individual tracking number 2706131952, is the Qualified Individual and Responsible Management, as a partner, and Terry Ann Porter, individual tracking number 2706131953, is the Responsible Management, as a partner, for license number 2705079204. (Exh. I-3)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

Anything Wood failed to operate in the name in which the license was issued.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding *subcontractors to the contracting parties and those who engage in routine maintenance or service contracts*, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

Anything Wood failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

Section 54.1-1100 of the Code of Virginia states "'Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000.00 but less than \$7,500.00..."

Anything Wood practiced in a class of license for which it is not licensed.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

In January 2004, Anything Wood ceased work after completing stacking the first story logs and three quarters of the second story. (Exh. C-1)

As of February 9, 2004, Anything Wood failed to complete the interior walls, install windows, place the second story, frame the deck and porch, and complete the roof system. (Exh. C-1)

On March 27, 2004, Steve Hartman Builders entered into a written contract, in the amount of \$36,000.00, with the Argenzios to finish the weathertight phase of the log construction at the subject property. The contract indicated "40% of the work was completed and that 60% was left to be done." (Exh. C-4)

As of January 6, 2005, the Argenzios have not seen or heard from Michael Armstrong, Terry Porter, or Anything Wood since leaving the job in January 2004. (Exh. I-4)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outline in Count 4:

As of January 6, 2005, Anything Wood retained funds for work not performed on performed only in part.

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On March 15, 2004, Investigator Carolyn Wright, the Board's agent, made a written request, via certified mail, to Anything Wood at 11506 Leiden Lane, Midlothian, Virginia, 23112, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by March 31, 2004. (Exh. I-1)

On April 9, 2004, the certified letter, which was marked "unclaimed," was returned to the Board's agent by the United States Postal Service. (Exh. I-2)

As of January 6, 2005, Anything Wood failed to respond to an investigator seeking information in the investigation of a complaint filed with the board.

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT**

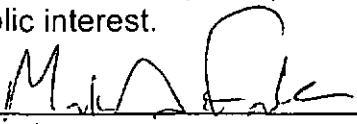
**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: Mark Franko
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on March 16, 2005
5. Nature of Personal Interest Affected by Transaction: _____

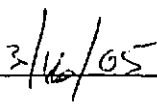
6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.



Signature



Date